

1982 S.C. Op. Atty. Gen. 47 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-41, 1982 WL 155010

Office of the Attorney General

State of South Carolina

Opinion No. 82-41

June 9, 1982

***1 SUBJECT: Taxation, Sales Tax, CATV Systems.**

CATV Systems furnish the ways or means of transmitting communication as provided by §§ 12-35-140 and 12-35-1150 and because of such, the gross proceeds derived therefrom are subject to the sales tax.

TO: Mr. Cyril C. McCrary

Director

Sales and Use Tax Division

QUESTION:

Do CATV Systems furnish the ways or means of transmitting communication as set forth by §§ 12-35-150 and 12-35-1150 so as to subject the gross proceeds derived therefrom to the sales tax?

STATUTES:

South Carolina Code of Laws (1976), as amended, §§ 2-7-30, 12-35-140, 12-35-510, 12-35-630 and 12-35-1150.

DISCUSSION:

Community Antenna Television (CATV) Systems are “systems that receive television broadcast signals, amplify them, transmit them by cable or microwave, and distribute them by wire to subscribers,” [F.C.C. v. Midwest Video Corp.](#), 99 S.Ct. 1435, 1440, 440 U.S. 689, 59 L.Ed. 2d 692. See also, [United States v. Southwestern Cable Co.](#), 88 S.Ct. 1994, 392 U.S. 157, 20 L.Ed. 2d 1001.

The issue at hand is whether the services performed by CATV Systems bring them within the activity taxed by §§ 12-35-140 and 12-35-1150. CATV Systems were in their infancy when these statutes were enacted. However, §§ 12-35-1150 is written in board general terms and uses the present tense.

Section 12-35-510 imposes the sales tax ‘upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property’. This is to equal ‘four percent of the gross proceeds of sales of the business’. By way of definition, § 12-35-140 further provides that:

‘For the purposes of this chapter [35] the term ‘tangible personal property’ shall be interchangeable with and apply with equal force and effect to services * * * including communications, as are specifically providing for in this chapter.’

Chapter 35 of Title 12 specifically states at § 12-35-1150 that:

‘Notwithstanding any other provision of law, the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages, including the charges for use of equipment furnished by the seller or supplier

of the ways or means for the transmission of the voice or of messages, are subject to the license, sales or use tax, as provided by this chapter.’

Thus, the question becomes one of statutory construction. Where a statute is expressed in broad and general terms and words of present or future tense are used, it will be applied, not only to situations existing and known at the time of the enactment, but also prospectively to things and conditions that come into existence thereafter, 82 C.J.S., Statutes, § 319.

In addition, § 2–7–30 provides further guidance as to the construction of statutes. It states ‘words ‘importing the present tense shall apply to the future also’. Hence, the South Carolina Code of Laws specifically calls for such prospective or expansive treatment where applicable.

*2 It is a settled rule, though, that tax laws are to be strictly construed against the State and in favor of the taxpayer, and where there is reasonable doubt as to the meaning of a revenue statute, the doubt is resolved in favor of those taxed. Colonial Life & Accident, Inc. v. South Carolina Tax Commission, 233 S.C. 129, 103 S.E. 2d 908 (1958).

In furtherance of this fundamental precept, the United States Supreme Court stated in Gould v. Gould, 245 U.S. 151, 62 L.Ed. 211, 38 S.Ct. 53 (1915) that:

‘In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out.’

However, there is a limitation to this rule of strict construction. Our court in Wingfield v. South Carolina Tax Commission, 134 S.C. 251, 131 S.E. 421, 423 (1926) held:

‘ * * * [T]he ‘rule of strict construction of penal laws and tax statutes’ is subordinate to the rule of reasonable, sensible construction having in view effectuation of the legislative purpose.’

The court in Wingfield was quoting from Crescent Mfg. Co. v. Tax Commission, 129 S.C. 480, 124 S.E. 761. In Crescent, the court considered the general objectives of the tax laws and focused upon the fundamental importance of accomplishing uniformity and equality among classes of taxpayers. In doing such, the court recognized strict construction, in the complex network of taxation, may be the equivalent of an exemption which shifts the burdens to others and undermines an equitable distribution of the State's tax burden.

Finally, it should be noted that § 12–35–630 provides that for purposes of the ‘proper administration’ of Chapter 35 and to ‘prevent evasion of sales tax’ a presumption is created. The presumption being ‘that all gross receipts are subject to the tax until the contrary is established’.

Therefore, a reasonable construction of §§ 12–35–1150 and 12–35–140 would indicate that anyone bringing themselves within the activity of furnishing or providing a way or means of transmitting communication would subject the gross proceeds derived therefrom to a sales tax. Do community antenna television systems come within such an activity?

From the courts definition in Midwest Video, there is no question that CATV Systems furnish a ways or means of transmitting communication. This transmission includes voice as well as messages, but does such constitute communication?

In ruling that CATV Systems came under the authority of Federal Communications Commission to regulate broadcasting and other communications, the Supreme Court held in United States v. Southwestern Cable Co., supra, at p. 2000 that:

‘Nor can we doubt that CATV Systems are engaged in interstate communication * * * we may take notice that television broadcasting consists in very large part of programming devised for, and distributed to, national audiences; respondents [CATV Systems] thus are ordinarily employed in the simultaneous retransmission of communication * * *.’

CONCLUSION:

*3 CATV Systems furnish the ways or means of transmitting communication as provided by §§ 12–35–140 and 12–35–1150 and because of such, the gross proceeds derived therefrom are subject to the sales tax.

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